

**UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF NEW YORK**

**FARM SANCTUARY; ANIMAL LEGAL
DEFENSE FUND; ANIMAL OUTLOOK;
ANIMAL WELFARE INSTITUTE;
COMPASSION IN WORLD FARMING;
FARM FORWARD; and MERCY FOR
ANIMALS, INC.,**

Plaintiffs,

v.

SONNY PERDUE, in his official capacity as
Secretary of Agriculture; and **UNITED
STATES DEPARTMENT OF
AGRICULTURE; FOOD SAFETY AND
INSPECTION SERVICE**; and **PAUL
KIECKER**, in his official capacity as Food
Safety and Inspection Service Administrator,

Defendants.

Civil Action No.: 6:20-cv-06081

The Honorable Frank P. Geraci, Jr.

**DECLARATION OF DAVID
WASHBURN ON BEHALF OF
FARM SANCTUARY**

I, DAVID WASHBURN, declare as follows:

1. I am over 21 years of age and have personal knowledge of the matters asserted in this declaration, and I would state the same if called upon to testify.
2. I am a member of Farm Sanctuary (FS). I became a member of FS because I support its mission to combat the abuse of farmed animals and support farmed animal welfare. I rely on FS for information about factory farm practices, including regulatory developments around industrial animal raising and slaughter, and how those practices affect animal welfare, my personal health, and public health.
3. I am submitting this declaration in support of Plaintiffs' challenge to Defendants' failure to follow Congressional mandates under the Humane Methods of Slaughter Act (HMSA) regarding non-ambulatory, or downed, livestock and to Defendants' September 2019 denial of

Plaintiffs' petition for rulemaking requesting seeking a regulatory prohibition on the slaughter of downed pigs for human consumption.

4. I currently reside in Mount Vernon, in Westchester County, New York, and have been a professional chef for more than six years. I presently work in a college dining hall, where I purchase and prepare food, including pork products, for public consumption. I have a bachelor's degree in journalism and communications and an associate degree in culinary arts.

5. I eat pork products at least once a week. I eat a full range of processed and non-processed pork products. I eat pork products when I am working as a chef, including food I prepare, and I also purchase and consume pork products when I go out to eat.

6. I regularly purchase wholesale cuts of pork, including shoulder, loin, and ribs. I also purchase a full range of processed pork products. Additionally, I purchase sub-primal cuts of pork, which come vacuum-packed. Before even opening these packages of meat, I often see contusions on the flesh. This can show evidence of pre-slaughter abuse, infection, or contamination of the animal. I see such contusions in about 1/20 of all the large cuts of pork I purchase. There is no way for me to observe evidence of such trauma in the processed pork products I purchase. I am also aware that even in non-processed pork most abuse, infection, and contamination cannot be visually detected and so a lack of contusions does not guarantee that a product is safe or was treated humanely.

7. The slaughter of downed pigs for human consumption is of critical concern to me, both personally and professionally.

8. I am concerned that allowing the slaughter of downed pigs without investigating and reporting to Congress on the scope, causes, and humane treatment these animals, as well as the extent to which non-ambulatory livestock may present handling and disposition issues, increases

the likelihood that I may be exposed to foodborne illnesses from contaminated pork, and that I may expose others to such illnesses.

9. I am concerned about increased exposure to foodborne illnesses in both my capacity as a consumer and a professional chef. As a consumer, I am concerned that I am at a heightened risk of harm from eating pork that comes from downed pigs, and as a professional, I am concerned that I will purchase and receive pork sourced from downed pigs and will expose those who I serve to harm.

10. I am very aware of food safety and foodborne illnesses. In fact, food safety makes up a substantial part of my daily work routine. In addition to on-the-job training, I learned about food safety and foodborne illnesses when studying for my culinary arts degree. I am also ServSafe certified, which means I have passed an accredited food safety education program that educates food industry workers about food safety and protecting the public from foodborne illnesses. I also receive daily updates about food recalls and regularly check the Centers for Disease Control and Prevention (CDC) for news regarding foodborne illnesses.

11. I am very familiar with foodborne illnesses that are commonly associated with pigs and pork products. I understand that the CDC estimated that between 1998 and 2008 about 525,000 people became ill and over 80 people died each year in the United States from foodborne illnesses attributable to pork.

12. I further understand that foodborne illnesses from pork come from a variety of different pathogens, including *Salmonella*, which causes salmonellosis, a disease that can range in severity, from death to moderate symptoms like vomiting and diarrhea. I also know that the CDC estimates that for every confirmed case of *Salmonella*, there are thirty more *Salmonella* cases that go undiagnosed, that pork products are recognized as a major cause of foodborne

salmonellosis, and that the U.S. Department of Agriculture's (USDA) Food Safety Inspection Services (FSIS) has recognized that pork has consistently been implicated in human Salmonella illnesses.

13. I am also aware that studies have indicated that pig fecal matter has been found to include a host of bacterial pathogens, including *Bacillus anthracis*, *Brucella* spp., *Campylobacter* spp., *Chlamydia* spp., *E. coli*, *Leptospira* spp., *Listeria monocytogenes*, *Mycobacterium* spp., *Salmonella* spp., and *Yersinia* spp.

14. I understand that non-ambulatory pigs are often held in pens at slaughterhouses for long periods of time before being slaughtered. I further understand that because they are unable to rise from the floors of dirty holding pens, non-ambulatory pigs are especially susceptible to being exposed to contaminated feces, and hence are more likely to be carriers of disease than ambulatory pigs.

15. For example, I understand that a Scientific Opinion by the European Food Safety Authority linked long holding times to increased rates of *Salmonella* and *Yersinia* in pigs and found that the longer pigs are held in pens, the more likely their flesh is to carry these diseases. Indeed, this Scientific Opinion specifically recommends avoiding holding pigs in pens in order to prevent *Salmonella* and *Yersinia* cross-contamination.

16. I understand that the FSIS has likewise recognized that holding pigs in pens can both increase the prevalence of pathogens and cause pathogenic cross-contamination, and that the longer pigs are held, the more such cross-contamination can occur.

17. Thus, because downed pigs are often held in pens for long periods of time, products from downed pigs are more likely to be contaminated with food-borne diseases than products from other pigs.

18. I know that *Yersinia enterocolitica* is almost exclusively associated with pork consumption and causes about 100,000 infections and dozens of deaths annually in the United States. I understand that a Consumer Reports study found *Yersinia* in sixty-nine percent of pork samples tested, and that the vast majority—more than ninety percent—of the *Yersinia* samples were drug-resistant.

19. I understand that pigs' feces can also carry and transmit *Listeria monocytogenes*, which can cause fever, diarrhea, convulsions, miscarriages, stillbirths, and other symptoms; is considered a significant public health hazard; and is responsible for an estimated twenty-eight percent of U.S. foodborne illness deaths. I am aware that, according to the CDC, in recent years numerous people have been hospitalized due to multiple multi-state *Listeria* outbreaks attributed to pork products.

20. I am aware that pigs' feces can carry and transmit *E. coli*, that pork products are a known source of *E. coli*, and that *E. coli* infection can be potentially life-threatening and can cause varying symptoms, including kidney problems (like hemolytic uremic syndrome), severe intestinal pain, and fever.

21. I also know that *Campylobacter* can be transmitted by pork from downed pigs and can cause symptoms like intestinal pain, irritable bowel syndrome, and paralysis, and can be fatal among very young children, the elderly, and the immunocompromised. I am aware that, according to the CDC, *Campylobacter* is the most common bacterial cause of diarrheal disease in the United States, that an estimated 1.5 million Americans are infected by the disease each year, and that the disease can be fatal in those with compromised immune systems as well as the elderly and the very young. I also am aware that numerous *Campylobacter* outbreaks in the

United States have been associated with pork products, and I am concerned that the USDA is not adequately testing for *Campylobacter*.

22. I am further aware that it is getting harder to treat some of the illnesses caused by pork from downed pigs because of antibiotic resistance. For instance, I know that *Campylobacter* and *Salmonella* are drug-resistant bacteria and are classified as serious threats by the CDC because they are becoming less susceptible to antibiotics, meaning there are fewer options for treating people with severe infections. I am also aware of a study that indicates that non-ambulatory pigs have been documented to be sixteen times more likely than ambulatory pigs to harbor antibiotic-resistant *Campylobacter*.

23. I am aware that although some of the risks posed by consuming products from downed pigs can be reduced by cooking, they often are not, resulting in people becoming seriously ill and, in some cases, dying. This is partly because pork products must be cooked to well-done temperatures in order to mitigate disease risk, but often are cooked instead rare or medium temperatures. To ensure that bacteria in pork products is killed by cooking requires specifically measuring the internal core temperature of the meat over a period of time—something most people do not do. Even if most pathogens are killed by cooking, if even just a few remain, they can multiply after cooking. Because of these factors, I have serious concerns about disease exposure from pork products from downed pigs despite the fact that I am careful when preparing pork products.

24. There is no identifying label that states whether a certain package of pork originates from a downed pig. Because there is a lack of transparency regarding which products are sourced from downed animals, there is no way I can avoid consuming, purchasing, and serving pork produced from downed pigs. Therefore, I am concerned that I am put at heightened risk because of the

FSIS's failure to follow its congressional mandates regarding non-ambulatory livestock and its denial of the Plaintiffs' rulemaking petition.

25. My concerns about the risks posed by downed pigs are heightened because I am aware that the USDA's own Office of Inspector General (OIG) has repeatedly found that the agency is failing to ensure food safety and that the FSIS does not deter pig slaughterhouses from being repeat violators of food safety regulations. I am aware that the OIG has specifically noted that the FSIS has repeatedly failed to adequately address fecal contamination of pork products, a particular concern with products from downed pigs.

26. I am aware that a 2018 Environmental Working Group analysis of more than 47,000 federal government lab tests of bacteria on supermarket meat found an increase in the already high number of pork chops contaminated with antibiotic-resistant bacteria. According to this analysis, 71% of pork chops contained antibiotic-resistant bacteria.

27. I am also concerned about animal welfare and am concerned that downed pigs are cruelly forced to rise in an effort to get them to walk to slaughter, including through dragging, electroshocking, and beating. I do not want my purchase to support such cruelty.

28. I often speak with the customers where I work regarding animal welfare and food safety, and it is difficult to assure them that the pork products I provide them have come from pigs who have been humanely and safely handled and slaughtered. I am a conscientious purchaser and aim to provide customers with what they want. I am concerned that I cannot serve them pork that is wholesome, safe, and handled and slaughtered according to the HMSA and the Federal Meat Inspection Act (FMIA) as a result of the USDA's failure to adequately study and regulate downed pigs.

29. Zoonotic diseases, or diseases passed from animals to humans, are of great concern to me. Because downed pigs are already more susceptible to being hosts to a wide range of contagions, I fear the spread of novel zoonoses from downed pigs. Continued failure to investigate and report on the scope and causes that render pigs non-ambulatory heightens my fear that the slaughter of downed pigs for human consumption may exacerbate the spread of zoonoses. I know that the 2009 H1N1 (swine flu) pandemic showed that the spread of disease from farmed pigs to humans is not only possible but can be deadly. I am aware that the CDC estimated that in the United States between April 2009 and April 2010, there were 60.8 million cases of swine flu, hospitalizing more than 270,000 people and killing more than 12,000 people. I am also aware that downed pigs are more susceptible to being carriers of H1N1. Public health is exceedingly relevant in this time of the COVID-19 pandemic and has made following the government-mandated protections of the FMIA and the HMSA more important than ever to me and the people I serve at my job.

30. My concern about my increased risk of contracting potentially fatal and untreatable diseases from pork products from downed pigs—and my concern about exposing those I serve in my job to such risks—would be substantially reduced if the Court were to order Defendants to comply with the HMSA's mandates regarding non-ambulatory livestock and to set aside the denial of Plaintiffs' petition for rulemaking. My concerns about the humane treatment of the animals who provide the pork products I consume and serve would also be substantially reduced by such an order.

Pursuant to 28 U.S.C. § 1746, I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

Dated: 05 / 05 / 2020

/s/ 

David Washburn